

REQUEST FOR COUNCIL ACTION

SUBJECT:

Proposed amendments to Title 1, Chapter 14, Article C, dealing with responding to a Notice of Violation issued by the City's Code Enforcement Office and proposed amendments to Title 5, Chapter 3 defining a public nuisance.

SUMMARY:

The Code Enforcement amendments address Code violations that require faster remediation than the usual 14 days. The amendments call on the City Manager, by Administrative Directive, to designate those code violations from time to time that require more rapid remediation.

The nuisance amendments give relief to large landowners now faced with the costly requirement to mow their large land holdings several times per growing season to comply with the current requirement to control weeds. The proposed new language will allow a large landowner (5 acres or more) to mow a 30 foot protection strip along the boundary of the property and not the entire property. However noxious and injurious weeds still need to be controlled on the entire property.

FISCAL IMPACT:

Staff believes there will be no fiscal impact from the proposed text amendments.

STAFF RECOMMENDATION:

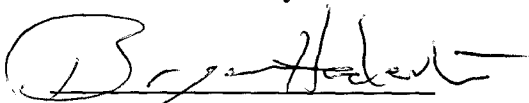
Staff recommends adoption of the proposed changes.

MOTION RECOMMENDED:

"I move that the City Council adopt and approve Ordinance 15-17, amending Title 1, Chapter 14, Article C, dealing with responding to a Notice of Violation issued by the City's Code Enforcement Office and amending Title 5, Chapter 3 defining a public nuisance, all as provided in the Ordinance attached to the Request for Council Action."

Roll Call Vote ☒ required. ☐ not required.

Recommended By



Bryce Haderlie
Interim City Manager

Reviewed by:



Robert Thorup
Deputy City Attorney

THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

ORDINANCE NO. 15- 17
[CODE ENFORCEMENT & WEED ABATEMENT]

AN ORDINANCE AMENDING TITLE 1, "ADMINISTRATION"
AND TITLE 5, "ENVIRONMENT AND HEALTH."

WHEREAS, the City of West Jordan adopted a City Code in 2009, for the purpose of carrying into effect and discharging all powers and duties conferred by law upon the city and its officers, employees and inhabitants, and to provide for the safety, preserve the health, promote the prosperity, improve the morals, peace, good order, comfort and convenience of the city and its inhabitants, and to protect property in the city; and

WHEREAS, the West Jordan City Council finds and determines that the purpose of the 2009 City Code, and the public health and welfare, will best be reached by the adoption of the following amendments to Title 1, Chapter 14 and Title 5, Chapter 3 of the 2009 City Code.

NOW THEREFORE, IT IS ORDAINED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH:

Section 1. Title 1, Chapter 14, Article C, Sections 5 and 7 of the 2009 City Code shall hereafter read as follows:

1-14C-5: RESPONDING OR NOT RESPONDING TO A NOTICE OF VIOLATION:

A. Suspension And Possible Dismissal Of Penalties For Prompt And Continuing Remediation Of Violations: Any and all accrued penalties associated with the violations described in the notice of violation shall be suspended if:

1. The responsible person causes violations described in a notice of violation to be corrected;
2. The responsible person requests an inspection from the city within fourteen (14) days following service of the notice of violation; and
3. A notice of compliance is issued in response to that request for an inspection.

This suspension of penalties will continue and will be dismissed if during the twelve (12) months immediately following the date of the notice of compliance there is no recurrence of substantially the same violation.

- B. **Penalties Continue To Accrue:** If a responsible person fails to correct the violations described in a notice of violation within fourteen (14) days of service of the notice of violation, or the responsible person commits or allows substantially the same violation within the succeeding twelve (12) months following issuance of a notice of compliance, all penalties that began to accrue daily on the date of the first notice of violation shall be owed in full to the city and shall continue to accrue for each and every subsequent day of continuing violation.
- C. **Criminal Prosecution Possible:** Failure to remedy the violations described in a notice of violation is a class B misdemeanor and may be prosecuted as such.
- D. **Penalty Suspension After Hearing:** Notwithstanding subsection B of this section, the hearing officer may order accrued penalties and costs to be dismissed, in whole or in part, or suspended.
- E. **Request A Hearing:** If the responsible person(s) served with a notice of violation disputes the legal or factual bases of the violations described in the notice of violation, the responsible person(s) may request a code enforcement hearing before a hearing officer.
- F. **Failure To Respond To The Notice Of Violation; Default Judgment:** A responsible person who fails to request a hearing or remediate the violation and request an inspection by the city within fourteen (14) days will be subject to the entry of default judgment upholding the notice of violation and directing and imposing the actions, penalties, fees and costs associated therewith. This default judgment will be final and nonappealable.
- G. **Civil Penalties Accrue Daily:** Unless suspended or reduced as otherwise provided in this article or in a code enforcement order, civil penalties accrue daily until a notice of compliance is issued.
- H. **Extension Of Time:** The recipient of a notice of violation may request an extension of the fourteen (14) day period for remediating code violations set out in the notice of violation by submitting a request in writing to the code enforcement division at the address and telephone number shown on the notice of violation at any time within the first fourteen (14) days after service of the notice of violation stating and affirming as follows:
1. The responsible person waives any right to request a hearing to dispute the notice of violation;
 2. The responsible person is actively engaged in remediation activities; and
 3. The claimed inability to complete remediation activities in time to request an inspection within fourteen (14) days is the result of specified and adequately described factors and forces outside of the control of the responsible person.
- I. **Shortening of Time:** The fourteen (14) day time periods provided at various places within this Section 1-14C-5 may be shortened by administrative directive of the city manager in response to the need for more rapid response and abatement. (Ord. 12-10, 4-25-2012, eff. 7-1-2012; amd. Ord. 15-___, 07-08-2015)

1-14C-7: CODE ENFORCEMENT HEARINGS:

A. Purpose: The city council finds that there is a need to establish uniform procedures for code enforcement hearings conducted pursuant to this article. It is the purpose and intent of the city council to afford due process of law to any person who is directly affected by a code enforcement action. Due process of law includes notice, an explanation of the accusations, and an opportunity to be heard prior to imposition of a penalty. These procedures are also intended to establish a forum to efficiently, expeditiously, and fairly review and resolve issues raised in any notice of violation.

B. Request For Code Enforcement Hearing:

1. A responsible person has the right to request a code enforcement hearing by filing a written request and paying the required filing fee, if the request is filed within ten (10) days from the date of one of the following:

- a. Service of a notice of violation;
- b. Service of a notice of abatement; or
- c. A refusal by the city to issue a notice of compliance following an inspection.

2. As soon as practicable after receiving a request for hearing, the city manager shall arrange for and appoint a hearing officer, and the hearing officer will schedule a date, time, and place for the hearing, and will serve written notice of the same to all responsible persons.

3. Failure to timely request a hearing as provided shall constitute a waiver of the right to a hearing and a waiver of the right to challenge the city's action set out in the notice of violation. Such a failure to request a hearing will result in a default judgment being entered upholding the notice of violation and assessing accrued fees, penalties and costs.

C. Procedures At Code Enforcement Hearings:

1. Informal In Nature: Code enforcement hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply; however, an informal exchange of relevant documents and other evidence may be required.

2. Discovery Requests: Discovery requests must be in writing directed to the opposing party. Failure to timely request discovery shall preclude a continuance to enable additional discovery or investigation.

3. Personal Information Protected: A complainant's personal identifying information is protected and shall not be released unless the complainant is a witness at the hearing.

4. Burden Of Proof:

a. The city bears the burden of proof at a code enforcement hearing requested to substantively challenge a notice of violation.

b. At a hearing challenging the denial of a notice of compliance the responsible person(s) will bear the burden of proof and persuasion with respect to the claim that a notice of compliance should issue.

c. In a code enforcement hearing requested to review the costs associated with an involuntary abatement, the responsible person has the burden of proof that one or more costs were improper or excessive.

d. In any hearing on a motion to set aside a default judgment, the responsible person has the burden of proof to show good cause.

5. Standard Of Proof: The standard of proof to be used by the hearing officer in deciding any issue at a code enforcement hearing is the preponderance of the evidence. A preponderance of the evidence shows what is more likely than not.

6. Activities Allowed To Support Case: Each party shall have the opportunity to cross examine witnesses and present evidence in support of his or her case. If approved in advance by the hearing officer, testimony may be given by telephone or other electronic means.

7. Hearings Open To Public: All hearings are open to the public. Hearings shall be recorded to enable verbatim transcripts to be prepared as needed.

8. Representation By Attorney: The responsible person has a right to be represented by an attorney. If an attorney will be representing the responsible person at the hearing, notice of the attorney's name, address, and telephone number must be given to the city's code enforcement program office at least seventy two (72) hours prior to the hearing. If timely notice is not given, and an attorney appears for a responsible person, the hearing will be continued at the city's request, and any costs of the continuance will be assessed to the responsible person.

9. Fee Refund If Violation Dismissed: If the hearing officer dismisses the notice of violation entirely, the hearing fee shall be refunded to the responsible person who paid it.

D. Failure To Attend Code Enforcement Hearing: Any responsible person named in a notice of violation who fails to appear at a duly noticed hearing is deemed to waive the right to a hearing, which will result in a default judgment entered for the city as to that responsible person. (Ord. 12-10, 4-25-2012, eff. 7-1-2012; amd. Ord. 15-___, 07-08-2015)

Section 2. Title 5, Chapter 3, Sections 1, 2 and 3 of the 2009 City Code shall hereafter read as follows:

5-3-1: NUISANCE DEFINED AND PROHIBITED:

A. Nuisance Defined: A "nuisance" is:

1. Any item, thing, manner or condition whatsoever that is dangerous to human life or health or general welfare, or renders soil, air, water or food impure or unwholesome;

2. A crime against the good order and economy of the state and consists in unlawfully doing any act or omitting to perform any duty, which act or omission does one of the following:

a. Annoys, injures or endangers the comfort, repose, health or safety of three (3) or more persons;

b. Offends public decency;

c. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake, stream, canal or basin, or any public park, square, street or highway; or

d. In any way renders three (3) or more persons insecure in life or the use of property;

3. Placing the carcass of any dead animal, or the offal from any slaughter pen, corral or butcher shop into any river, creek, pond, street, alley or public highway, or road in common use, or the attempt to destroy such carcass or offal by fire, within the city limits or within one-fourth ($\frac{1}{4}$) mile of the city;

4. Constructing or maintaining a corral, sheep pen, goat pen, stable, pigpen, chicken coop, or other offensive yard or outhouse, where the waste or drainage shall flow directly or indirectly into the waters of any stream, well, or spring of water used for domestic purposes;

5. Depositing, piling, unloading or leaving any manure heap, offensive rubbish or the carcass of any dead animal where the waste or drainage will flow directly or indirectly into the waters of any stream, well or spring of water used for domestic purposes;

6. Dipping or washing sheep in any stream, or constructing, maintaining or using any pool or dipping vat for dipping or washing sheep in close proximity to any stream or well used by the inhabitants of the city for domestic purposes as to make the waters impure or unwholesome;

7. Constructing or maintaining any corral, yard or vat to be used for the purpose of shearing or dipping sheep within the city limits or within twelve (12) miles of the outside city limits, where the refuse or filth from the corral or yard would naturally find its way into any stream of water used by the inhabitants of the city for domestic purposes;

8. Establishing and maintaining any corral, camp or bedding place for the purpose of herding, holding or keeping any cattle, horses, sheep, goats or hogs within the city limits or within seven (7) miles of the outside city limits, where the refuse or filth from the corral, camp or bedding place will naturally find its way into any stream of water or well used by the inhabitants of the city for domestic purposes; or

9. Any injurious or noxious weeds, garbage, refuse, or unsightly or deleterious objects.

a. For purpose of this Chapter 3, "injurious weeds" and "noxious weeds" shall mean plants of any type growing in an uncultivated state, not used for food, fiber or ornamentation, extending in height greater than twelve inches (12") aboveground, including without limitation tumbleweeds; provided, however, that if a parcel of undeveloped ground is a size of five (5) contiguous acres or larger, weed growth, other than injurious and noxious weeds, may be left at a height higher than twelve inches (12") above ground if the property owner maintains a defense strip of thirty feet (30') along every property line or road/sidewalk edge surrounding the property, wherein weed growth is maintained at a height of twelve inches (12") or less at all times. The term "injurious or noxious weeds" shall also include those plants listed as noxious weeds by the state commissioner of agriculture pursuant to Utah Code Annotated section 4-17-3, together with such plants later added to such list.

b. Tumbleweeds are the result of various plants that have dried out and been broken free of their roots and the soil by the wind. Tumbleweeds present a distinct fire hazard that becomes greater as they dry out and accumulate against structures such as fences, out buildings, houses and businesses. Property owners are expected to clear tumbleweeds from their property.

- B. Prohibition And Penalty: Nuisances are prohibited in and around the city. Any person, whether as owner, agent or occupant, who creates, aids in creating, tolerates or contributes to a nuisance, or who supports, continues or retains a nuisance, is guilty of a class B misdemeanor, and may be prosecuted criminally or may be subject to administrative enforcement procedures provided in title 1, chapter 14 of this code.
- C. Unequal Effect: An act which affects three (3) or more persons in any of the ways specified in this section is still a nuisance regardless if the extent of annoyance or damage inflicted on individuals is unequal.
- D. General Applicability: The duties imposed upon landowners pursuant to this section apply to all properties within the city, and without the city as specified. These provisions apply to undeveloped or undivided parcels and to individual developed lots, including the front yard, side yard or rear portion of any lots owned by such owner and to, pursuant to Utah Code Annotated section 10-8-23, that area in front of the property to the curb line of the street. (Ord. 13-08, 3-13-2013; amd. Ord. 15-____, 07-08-2015)

5-3-2: EXEMPTED ACTIVITIES:

The following activities are exempted from the definition of a nuisance and will not be subject to city enforcement action:

- A. Not A Nuisance: It is not a nuisance if the condition or animal described in section 5-3-1 of this chapter:
1. Is merely the result of those naturally occurring noises made by animals, including, but not limited to, mooing, bleating or crowing during daytime hours; provided that the foregoing exemption does not apply to the barking of dogs; and

2. The animal is lawfully kept on premises zoned for the keeping of such animal pursuant to the provisions of this Code.

3. Owners of animals claiming this exemption are required to maintain and control such animals in a responsible manner to prevent undue noise disturbances during nighttime hours. All animals making noise, including, but not limited to, dogs should, where possible, be confined in an enclosed structure between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M.

- B. Preexisting Farms And Ranches: The definition of a "nuisance" shall not apply to those properties and portions of properties engaged in active agricultural/ranch operations continuously dating from before the surrounding land was developed into the current residential or commercial uses. "Active agricultural/ranch operations" includes, but is not limited to, sights, sounds, odors, and dust inherent to raising crops, livestock, and livestock products. Included in this exemption are weeds growing in areas of cultivated farm properties which cannot be economically utilized for crop production so long as the weeds are maintained below 12 inches in height and are not injurious and noxious weeds. In this regard, the city council finds that the incidental growth of weeds at the ends of planted rows of crops is an unavoidable condition in agriculture.
- C. Ditch Bank Protection: The definition of "nuisance" shall not apply to weeds growing along active ditch banks, unless a traffic hazard or other danger is presented by the growth of the weeds and so long as the weeds are maintained below 12 inches in height and are not injurious and noxious weeds. In this regard, the city council finds that weeds along active ditch banks are necessary to preserve the stability of the ditch. (Ord. 13-08, 3-13-2013; amd. Ord. 15-___, 07-08-2015)

5-3-3: ACTION FOR ABATEMENT OF A NUISANCE:

- A. Authority: The city attorney is empowered to institute an action in the name of the city to abate a nuisance.
- B. Judgment: If the existence of a "nuisance", as defined by section 5-3-1 of this chapter, is admitted or established, in an administrative, civil or criminal proceeding, a judgment shall be entered which shall:
1. Permanently enjoin each defendant and any other person from further maintaining the nuisance at the place complained of and each defendant from maintaining such nuisance elsewhere;
 2. Direct the person enjoined to surrender to the sheriff of the county in which the action was brought any material in his possession which is subject to the injunction, and the sheriff shall seize and destroy this material; and
 3. Without proof of special injury, direct that an accounting be had and all monies and other consideration paid as admission to view any motion picture film determined to constitute a public nuisance or paid for any publication determined to constitute a public nuisance, in either case without deduction for expenses, be forfeited and paid into the general fund of the city.

C. Administrative Code Enforcement: As an alternative to commencing a civil action, the city may commence administrative enforcement processes as provided in title 1, chapter 14 of this code.

D. Removal Of Nuisance:

1. If any owner or occupant of lands shall fail or neglect to eradicate, destroy or remove weeds, garbage, refuse or objects upon the premises after notice to do so, the city may employ necessary assistance and cause such weeds, garbage, refuse or objects to be removed or destroyed. The city shall prepare an itemized statement of all expenses incurred in the removal and destruction and shall mail a copy to the owner demanding payment within twenty (20) days of the date of mailing. This notice shall be deemed delivered when mailed by registered mail addressed to the property owner's last known address. If the owner fails to make payment of the amount set forth in the statement to the city treasurer within twenty (20) days, the inspector, on behalf of the city, may cause suit to be brought in an appropriate court of law or may refer the matter to the county treasurer, as provided in this subsection.

2. If collection of such costs are pursued through the courts, the city may sue for and receive judgment upon all of such costs of removal and destruction, together with reasonable attorney fees, interest and court costs. The city may execute on such judgment in the manner provided by law.

3. If the city elects to refer the matter to the county treasurer for inclusion in the tax notice of the property owner, as provided by Utah Code Annotated section 10-11-4, the city shall make, in triplicate, an itemized statement of all expenses incurred in the removal and destruction of the nuisance and shall deliver the three (3) copies of the statement to the county treasurer within ten (10) days after the completion of the work removing such weeds, garbage, refuse or objects. (Ord. 13-08, 3-13-2013; amd. Ord. 15-____, 07-08-2015)

Section 3. Additions or amendments to the 2009 City Code when passed in such form as to indicate the intention of the city council to make the same a part of the 2009 City Code shall be deemed to be incorporated in the 2009 City Code, so that reference to the 2009 City Code hereafter includes the additions and amendments.

Section 4. This Ordinance shall become immediately effective.

Passed and adopted by the City Council of the City of West Jordan, Utah this 8th day of October, 2014.

CITY OF WEST JORDAN

By: _____
KIM V. ROLFE
Mayor

ATTEST:

MELANIE S. BRIGGS, MMC
City Clerk

Voting by the City Council

"AYE"

"NAY"

Jeff Haaga
Judy Hansen
Chris McConnehey
Chad Nichols
Sophie Rice
Ben Southworth
Mayor Kim V. Rolfe

CITY CLERK/RECORDER'S CERTIFICATE OF PUBLICATION

I, Melanie S. Briggs, certify that I am the City Clerk/Recorder of the City of West Jordan, Utah, and that the foregoing ordinance was published in the Legal Section, of the Salt Lake Tribune, on the _____ day of _____, 2015, pursuant to Utah Code Annotated, 10-3-711.

MELANIE S. BRIGGS, MMC
City Clerk/Recorder

[SEAL]

Legislative

1-14C-5: RESPONDING OR NOT RESPONDING TO A NOTICE OF VIOLATION:

- A. Suspension And Possible Dismissal Of Penalties For Prompt And Continuing Remediation Of ~~Real Property Related~~ Violations: Any and all accrued penalties associated with the violations described in the notice of violation shall be suspended if:
1. The responsible person causes ~~any real property related~~ violations described in a notice of violation to be corrected;
 2. The responsible person requests an inspection from the city within fourteen (14) days following service of the notice of violation; and
 3. A notice of compliance is issued in response to that request for an inspection.
- This suspension of penalties will continue and will be dismissed if during the twelve (12) months immediately following the date of the notice of compliance there is no recurrence of substantially the same violation.
- B. Penalties Continue To Accrue: If a responsible person fails to correct the violations described in a notice of violation within fourteen (14) days of service of the notice of violation, or the responsible person commits or allows substantially the same violation within the succeeding twelve (12) months following issuance of a notice of compliance, all penalties that began to accrue daily on the date of the first notice of violation shall be owed in full to the city and shall continue to accrue for each and every subsequent day of continuing violation.
- C. Criminal Prosecution Possible: Failure to remedy the violations described in a notice of violation is a class B misdemeanor and may be prosecuted as such.
- D. Penalty Suspension After Hearing: Notwithstanding subsection B of this section, the hearing officer may order accrued penalties and costs to be dismissed, in whole or in part, or suspended.
- E. Request A Hearing: If the responsible person(s) served with a notice of violation disputes the legal or factual bases of the violations described in the notice of violation, the responsible person(s) may request a code enforcement hearing before a hearing officer.
- F. Failure To Respond To The Notice Of Violation; Default Judgment: A responsible person who fails to request a hearing or remediate the violation and request an inspection by the city within fourteen (14) days will be subject to the entry of default judgment upholding the notice of violation and directing and imposing the actions, penalties, fees and costs associated therewith. This default judgment will be final and nonappealable.
- G. Civil Penalties Accrue Daily: Unless suspended or reduced as otherwise provided in this article or in a code enforcement order, civil penalties accrue daily until a notice of compliance is issued.
- H. Extension Of Time: The recipient of a notice of violation may request an extension of the fourteen (14) day period for remediating code violations set out in the notice of violation by submitting a request in writing to the code enforcement division at the address and telephone

number shown on the notice of violation at any time within the first fourteen (14) days after service of the notice of violation stating and affirming as follows:

1. The responsible person waives any right to request a hearing to dispute the notice of violation;
 2. The responsible person is actively engaged in remediation activities; and
 3. The claimed inability to complete remediation activities in time to request an inspection within fourteen (14) days is the result of specified and adequately described factors and forces outside of the control of the responsible person.
- I. Shortening of Time: The fourteen (14) day time periods provided at various places within this Section 1-14C-5 may be shortened by administrative directive of the city manager in response to the need for more rapid response and abatement. (Ord. 12-10, 4-25-2012, eff. 7-1-2012; amd. Ord. 15-___, 07-08-2015)

1-14C-7: CODE ENFORCEMENT HEARINGS:

- A. Purpose: The city council finds that there is a need to establish uniform procedures for code enforcement hearings conducted pursuant to this article. It is the purpose and intent of the city council to afford due process of law to any person who is directly affected by a code enforcement action. Due process of law includes notice, an explanation of the accusations, and an opportunity to be heard prior to imposition of a penalty. These procedures are also intended to establish a forum to efficiently, expeditiously, and fairly review and resolve issues raised in any notice of violation.
- B. Request For Code Enforcement Hearing:
1. A responsible person has the right to request a code enforcement hearing by filing a written request and paying the required filing fee, if the request is filed within ~~fourteen (14)~~ ten (10) days from the date of one of the following:
 - a. Service of a notice of violation;
 - b. Service of a notice of abatement; or
 - c. A refusal by the city to issue a notice of compliance following an inspection.
 2. As soon as practicable after receiving a request for hearing, the city manager shall arrange for and appoint a hearing officer, and the hearing officer will schedule a date, time, and place for the hearing, and will serve written notice of the same to all responsible persons.
 3. Failure to timely request a hearing as provided shall constitute a waiver of the right to a hearing and a waiver of the right to challenge the city's action set out in the notice of violation. Such a failure to request a hearing will result in a default judgment being entered upholding the notice of violation and assessing accrued fees, penalties and costs.
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1. Informal In Nature: Code enforcement hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply; however, an informal exchange of relevant documents and other evidence may be required.

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 3. Personal Information Protected: A complainant's personal identifying information is protected and shall not be released unless the complainant is a witness at the hearing.
 4. Burden Of Proof:
 - a. The city bears the burden of proof at a code enforcement hearing requested to substantively challenge a notice of violation.
 - b. At a hearing challenging the denial of a notice of compliance the responsible person(s) will bear the burden of proof and persuasion with respect to the claim that a notice of compliance should issue.
 - c. In a code enforcement hearing requested to review the costs associated with an involuntary abatement, the responsible person has the burden of proof that one or more costs were improper or excessive.
 - d. In any hearing on a motion to set aside a default judgment, the responsible person has the burden of proof to show good cause.
 5. Standard Of Proof: The standard of proof to be used by the hearing officer in deciding any issue at a code enforcement hearing is the preponderance of the evidence. A preponderance of the evidence shows what is more likely than not.
 6. Activities Allowed To Support Case: Each party shall have the opportunity to cross examine witnesses and present evidence in support of his or her case. If approved in advance by the hearing officer, testimony may be given by telephone or other electronic means.
 7. Hearings Open To Public: All hearings are open to the public. Hearings shall be recorded to enable verbatim transcripts to be prepared as needed.
 8. Representation By Attorney: The responsible person has a right to be represented by an attorney. If an attorney will be representing the responsible person at the hearing, notice of the attorney's name, address, and telephone number must be given to the city's code enforcement program office at least seventy two (72) hours prior to the hearing. If timely notice is not given, and an attorney appears for a responsible person, the hearing will be continued at the city's request, and any costs of the continuance will be assessed to the responsible person.
 9. Fee Refund If Violation Dismissed: If the hearing officer dismisses the notice of violation entirely, the hearing fee shall be refunded to the responsible person who paid it.
- D. Failure To Attend Code Enforcement Hearing: Any responsible person named in a notice of violation who fails to appear at a duly noticed hearing is deemed to waive the right to a hearing, which will result in a default judgment entered for the city as to that responsible person. (Ord. 12-10, 4-25-2012, eff. 7-1-2012; amd. Ord. 15-____, 07-08-2015)

5-3-1: NUISANCE DEFINED AND PROHIBITED:

A. Nuisance Defined: A "nuisance" is:

1. Any item, thing, manner or condition whatsoever that is dangerous to human life or health or general welfare, or renders soil, air, water or food impure or unwholesome;
2. A crime against the good order and economy of the state and consists in unlawfully doing any act or omitting to perform any duty, which act or omission does one of the following:
 - a. Annoys, injures or endangers the comfort, repose, health or safety of three (3) or more persons;
 - b. Offends public decency;
 - c. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake, stream, canal or basin, or any public park, square, street or highway; or
 - d. In any way renders three (3) or more persons insecure in life or the use of property;
3. Placing the carcass of any dead animal, or the offal from any slaughter pen, corral or butcher shop into any river, creek, pond, street, alley or public highway, or road in common use, or the attempt to destroy such carcass or offal by fire, within the city limits or within one-fourth ($\frac{1}{4}$) mile of the city;
4. Constructing or maintaining a corral, sheep pen, goat pen, stable, pigpen, chicken coop, or other offensive yard or outhouse, where the waste or drainage shall flow directly or indirectly into the waters of any stream, well, or spring of water used for domestic purposes;
5. Depositing, piling, unloading or leaving any manure heap, offensive rubbish or the carcass of any dead animal where the waste or drainage will flow directly or indirectly into the waters of any stream, well or spring of water used for domestic purposes;
6. Dipping or washing sheep in any stream, or constructing, maintaining or using any pool or dipping vat for dipping or washing sheep in such close proximity to any stream or well used by the inhabitants of the city for domestic purposes as to make the waters impure or unwholesome;
7. Constructing or maintaining any corral, yard or vat to be used for the purpose of shearing or dipping sheep within the city limits or within twelve (12) miles of the outside city limits, where the refuse or filth from the corral or yard would naturally find its way into any stream of water used by the inhabitants of the city for domestic purposes;
8. Establishing and maintaining any corral, camp or bedding place for the purpose of herding, holding or keeping any cattle, horses, sheep, goats or hogs within the city limits or within seven (7) miles of the outside city limits, where the refuse or filth from the corral, camp or bedding place will naturally find its way into any stream of water or well used by the inhabitants of the city for domestic purposes; or
9. Any injurious or noxious weeds, garbage, refuse, or unsightly or deleterious objects.

a. For purpose of this definition Chapter 3, "injurious weeds" and "noxious weeds" shall mean ~~those~~ plants of any type growing in an uncultivated state, not used for food, fiber or ornamentation, extending in height greater than twelve inches (12") aboveground, including without limitation tumbleweeds; provided, however, that if a parcel of undeveloped ground is a size of five (5) contiguous acres or larger, weed growth, other than injurious and noxious weeds, may be left at a height higher than twelve inches (12") above ground if the property owner maintains a defense strip of thirty feet (30') along every property line or road/sidewalk edge surrounding the property, wherein weed growth is maintained at a height of twelve inches (12") or less at all times. The term "injurious or noxious weeds" shall also include those plants listed as noxious weeds by the state commissioner of agriculture pursuant to Utah Code Annotated section 4-17-3, together with such plants later added to such list.

b. Tumbleweeds are the result of various plants that have dried out and been broken free of their roots and the soil by the wind. Tumbleweeds present a distinct fire hazard that becomes greater as they dry out and accumulate against structures such as fences, out buildings, houses and businesses. Property owners are expected to clear tumbleweeds from their property.

- B. Prohibition And Penalty: Nuisances are prohibited in and around the city. Any person, whether as owner, agent or occupant, who creates, aids in creating, tolerates or contributes to a nuisance, or who supports, continues or retains a nuisance, is guilty of a class B misdemeanor, and may be prosecuted criminally or may be subject to administrative enforcement procedures provided in title 1, chapter 14 of this code.
- C. Unequal Effect: An act which affects three (3) or more persons in any of the ways specified in this section is still a nuisance regardless if the extent of annoyance or damage inflicted on individuals is unequal.
- D. General Applicability: The duties imposed upon landowners pursuant to this section apply to all properties within the city, and without the city as specified. These provisions apply to undeveloped or undivided parcels and to individual developed lots, including the front yard, side yard or rear portion of any lots owned by such owner and to, pursuant to Utah Code Annotated section 10-8-23, that area in front of the property to the curb line of the street. (Ord. 13-08, 3-13-2013; amd. Ord. 15-____, 07-08-2015)

5-3-2: EXEMPTED ACTIVITIES:

The following activities are exempted from the definition of a nuisance and will not be subject to city enforcement action:

- A. Not A Nuisance: It is not a nuisance if the condition or animal described in section 5-3-1 of this chapter:
1. Is merely the result of those naturally occurring noises made by animals, including, but not limited to, mooing, bleating or crowing during daytime hours; provided that the foregoing exemption does not apply to the barking of dogs; and
 2. The animal is lawfully kept on the premises zoned for the keeping of such animal pursuant to the provisions of the city zoning ordinance this Code.
 3. Owners of animals claiming this exemption are required to maintain and control such animals in a responsible manner to prevent undue noise disturbances during nighttime hours. All animals making noise, including, but not limited to, dogs should, where possible, be confined in an enclosed structure between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M.

- B. Preexisting Farms And Ranches: The definition of a "nuisance" shall not apply to those properties and portions of properties engaged in active agricultural/ranch operations continuously dating from before the surrounding land was developed into the current residential or commercial uses. "Active agricultural/ranch operations" includes, but is not limited to, sights, sounds, odors, and dust inherent to raising crops, livestock, and livestock products. Included in this exemption are weeds growing in areas of cultivated farm properties which cannot be economically utilized for crop production so long as the weeds are maintained below 12 inches in height and are not injurious and noxious weeds. In this regard, the city council finds that the incidental growth of weeds at the ends of planted rows of crops is an unavoidable condition in agriculture.
- C. Ditch Bank Protection: The definition of "nuisance" shall not apply to weeds growing along active ditch banks, unless a traffic hazard or other danger is presented by the growth of the weeds and so long as the weeds are maintained below 12 inches in height and are not injurious and noxious weeds. In this regard, the city council finds that weeds along active ditch banks are necessary to preserve the stability of the ditch. (Ord. 13-08, 3-13-2013; amd. Ord. 15-____, 07-08-2015)

5-3-3: ACTION FOR ABATEMENT OF A NUISANCE:

- A. Authority: The city attorney is empowered to institute an action in the name of the city to abate a nuisance.
- B. Judgment: If the existence of a "nuisance", as defined by section 5-3-1 of this chapter, is admitted or established, ~~either~~ in an administrative, civil or criminal proceeding, a judgment shall be entered which shall:
1. Permanently enjoin each defendant and any other person from further maintaining the nuisance at the place complained of and each defendant from maintaining such nuisance elsewhere;
 2. Direct the person enjoined to surrender to the sheriff of the county in which the action was brought any material in his possession which is subject to the injunction, and the sheriff shall seize and destroy this material; and
 3. Without proof of special injury, direct that an accounting be had and all monies and other consideration paid as admission to view any motion picture film determined to constitute a public nuisance or paid for any publication determined to constitute a public nuisance, in either case without deduction for expenses, be forfeited and paid into the general fund of the city.
- C. Administrative Code Enforcement: As an alternative to commencing a civil action, the city may commence administrative enforcement processes as provided in title 1, chapter 14 of this code.
- D. Removal Of Nuisance:
1. If any owner or occupant of lands shall fail or neglect to eradicate, destroy or remove weeds, garbage, refuse or objects upon the premises after notice to do so, the city may employ necessary assistance and cause such weeds, garbage, refuse or objects to be removed or destroyed. The city shall prepare an itemized statement of all expenses incurred in the removal and destruction and shall mail a copy to the owner demanding payment within twenty (20) days of the date of mailing. This notice shall be deemed delivered when mailed by registered mail addressed to the property owner's last known address. If the owner fails to make payment of the amount set forth in the statement to the city treasurer within twenty (20) days, the inspector, on behalf of the city, may cause suit to be brought in an appropriate court of law or may refer the matter to the county treasurer, as provided in this subsection.

2. If collection of such costs are pursued through the courts, the city may sue for and receive judgment upon all of such costs of removal and destruction, together with reasonable attorney fees, interest and court costs. The city may execute on such judgment in the manner provided by law.

3. If the city elects to refer the matter to the county treasurer for inclusion in the tax notice of the property owner, as provided by Utah Code Annotated section 10-11-4, the city shall make, in triplicate, an itemized statement of all expenses incurred in the removal and destruction of the nuisance and shall deliver the three (3) copies of the statement to the county treasurer within ten (10) days after the completion of the work removing such weeds, garbage, refuse or objects. (Ord. 13-08, 3-13-2013; amd. Ord. 15-____, 07-08-2015)